Docket No. 4208-4047US1

(NC28559CIP)

COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

77368 v I

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: the specification of which is attached hereto was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable). PCT FILED APPLICATION ENTERING NATIONAL STAGE was described and claimed in International Application No. filed on and c. 🔲 . (if any). as amended on I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. l acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56. I hereby specify the following as the correspondence address to which all communications about this application are to be directed: SEND CORRESPONDENCE TO: 27123 The address associated with the Customer Number \boxtimes -OR-Address Shown (see below) **DIRECT TELEPHONE CALLS TO:** Joseph C. Redmond, Jr. (202) 857-7929

	Docket No. 4208-4047US1 I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed:					
	The attached 35 U. this declaration.	S.C. § 119 claim for	priority for the appl	ication(s) listed below	forms a part of	
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed	
					\square Y \square N	
					\square Y \square N	
					\square Y \square N	
	I hereby claim the below.	penefit under 35 U.S	S.C. § 119(e) of any U	J.S. provisional applic	ation(s) listed	
	Provisiona	al Application No.	Date of filing	(day, month, yr)		
I herel under	CO OR	ONTINUATION OPCT APPLICATION OF Title 35, Unite	TEMENTS FOR DI R CONTINUATIO ON(S) DESIGNATI d States Code § 120 c ation(s) designating the	N-IN-PART NG THE U.S. of any United States a	oplication(s) or	
Appln	. Ser. No. 10/105,320	March 2	6, 2002 Patente	ed (6,892,052 B2, issue	ed May 10, 2005)	
US/PC	CT Application Serial	No. Filing D	ate Status	(patented, pending, ab tion no. assigned (For	andoned)/ U.S.	
US/PC	CT Application Serial	No. Filing D		(patented, pending, ab tion no. assigned (For		
	application is not di application(s) in the 112, I acknowledge Federal Regulations	sclosed in the above manner provided b the duty to disclose s, § 1.56(a) which on	e listed prior United S y the first paragraph material information	t matter of any of the obtates or PCT internation of Title 35, United States as defined in Title 37 filing date of the prior cation.	onal tes Code, § , Code of	

Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby	y appoint:			
X	Practitioners associated with t	he Customer Number	27123	
-OR-				
	Practitioner(s) named below:			
<u> </u>	Name		Registration Number	
				
	instructions from as to	any action to be taken hout direct communica inge in the person(s) fro	amed hereinabove to accept and fol- in the U.S. Patent and Trademark O tion between the U.S. attorneys and, om whom instructions may be taken habove.	ffice for agents
Full na	ame first joint inventor:	Sakari KOTOLA		
Invent	or's signature*	Sakari KOTOLA	14.11.2	006
			Date	
Reside	ence:	Alppitie 10 B, 02700	Kaunianen, Finland	
Citize	nship:	Finland		
Post C	Office Address:	Same as above.		
Full na	ame of second joint inventor:	Holger HUSSMANN		
Invent	or's signature*			
Reside	ence:	Satakunnankatu 22 E	Date 125, 33210 Tampere, Finland	
Citize	nship:	Germany		
Post C	Office Address:	Same as above		

ATTACHED IS ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR

 \boxtimes

Docket No. <u>4208-4047US1</u>

SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*		Date
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	Date
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*		Dut
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland	Date
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*		
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	Heikki HUOMO	
Inventor's signature*		Date
Residence:	Riekkotie 13, 90650 Oulu, Finland	Daw
Citizenship:	Finland	
Post Office Address:	Same as above	

Docket No. 4208-4047US1

*Before signing this declaration, each person signing must:

- 1. Review the declaration and verify the correctness of all information therein; and
- 2. Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most (a) effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is

Docket No. 4208-4047US1

unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the National or PCT international filing date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in--
 - (1) an application for patent, published under section 122(b), by another filed in the United States

Docket No. 4208-4047US1

before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
 - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
 - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
 - (2) A patent issued on a process under paragraph (1)—
 - (A) shall also contain the claims to the composition of matter used in or made by that process, or
 - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
 - (3) For purposes of paragraph (1), the term "biotechnological process" means--

Docket No. 4208-4047US1

- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism to--
 - (i) express an exogenous nucleotide sequence,
 - inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
 - (iii) express a specific physiological characteristic not naturally associated with said organism;
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
 - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
 - (3) The Director may require a certified copy of the original foreign application, specification, and

Docket No. 4208-4047US1

drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents. provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
 - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
 - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
 - (1) the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
 - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

Docket No. 4208-4047US1

Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

Docket No. 4208-4047US1

COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that: My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: the specification of which is attached hereto was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable). PCT FILED APPLICATION ENTERING NATIONAL STAGE was described and claimed in International Application No. filed on and as amended on . (if any). I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56. I hereby specify the following as the correspondence address to which all communications about this application are to be directed: SEND CORRESPONDENCE TO: 27123 The address associated with the Customer Number -OR-Address Shown (see below)

DIRECT TELEPHONE CALLS TO:

Joseph C. Redmond, Jr. (202) 857-7929

	Docket No. 4208-4047US1 I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed: The attached 35 U.S.C. § 119 claim for priority for the application(s) listed below forms a part of this declaration.					
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed	
					□Y □N	
					□Y□N	
					□Y □N	
	I hereby claim the b below.	enefit under 35 U.S	.C. § 119(e) of any U	J.S. provisional applic	ation(s) listed	
under	AD CO OR I by claim the benefit ur § 365(c) of any PCT is	NTINUATION OPET APPLICATION OPET APPLICATION OF THE STATE	TEMENTS FOR DI R CONTINUATIO DN(S) DESIGNATI d States Code § 120 of tion(s) designating the	N-IN-PART NG THE U.S. of any United States ap ne U.S. listed below.	•	
	. Ser. No. 10/105,320 CT Application Serial 1	March 20 No. Filing Da		d (6,892,052 B2, issue patented, pending, ab		
03/10	71 Application Serial I	No. Filing Da		patented, pending, ab- tion no. assigned (For	,	
US/PC	CT Application Serial 1	No. Filing Da		patented, pending, ab- tion no. assigned (For		
	application is not dis application(s) in the 112, I acknowledge	closed in the above manner provided by the duty to disclose § 1.56(a) which on	insofar as the subject listed prior United S y the first paragraph of material information curred between the f	matter of any of the obtates or PCT internation Title 35, United States as defined in Title 37 illing date of the prior is	claims of this onal tes Code, § , Code of	

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereby appoint:		
Practitioners associated	d with the Customer Number	27123
-OR-	_	
Practitioner(s) named	below:	
Name		Registration Number
1 1 Hereby authorize the		ed hereinabove to accept and follow he U.S. Patent and Trademark Office
instructions from regarding this applicate and me. In the event of notify the U.S. attorney	ion without direct communication of a change in the person(s) from ys and/or agents named hereinable	n between the U.S. attorneys and/or agents whom instructions may be taken I will so
instructions from regarding this applicate and me. In the event o notify the U.S. attorner Full name first joint inventor:	ion without direct communication of a change in the person(s) from	n between the U.S. attorneys and/or agents whom instructions may be taken I will so
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instructions from regarding this applicate and me. In the event o notify the U.S. attorner Full name first joint inventor:	ion without direct communication of a change in the person(s) from ys and/or agents named hereinabout Sakari KOTOLA	n between the U.S. attorneys and/or agents whom instructions may be taken I will so ove. Date
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instructions from regarding this applicate and me. In the event o notify the U.S. attorner Full name first joint inventor: Inventor's signature* Residence: Citizenship:	ion without direct communication of a change in the person(s) from ys and/or agents named hereinable Sakari KOTOLA Alppitie 10 B, 02700 Kau Finland Same as above.	n between the U.S. attorneys and/or agents whom instructions may be taken I will so ove. Date
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instructions from regarding this applicate and me. In the event of notify the U.S. attorner. Full name first joint inventor: Inventor's signature* Residence: Citizenship: Post Office Address: Full name of second joint inventor.	ion without direct communication of a change in the person(s) from ys and/or agents named hereinable Sakari KOTOLA Alppitie 10 B, 02700 Kau Finland Same as above. Entor: Holger HUS\$MANN	Date 10. 11. 06 Date
instructions from regarding this applicate and me. In the event of notify the U.S. attorney Full name first joint inventor: Inventor's signature* Residence: Citizenship: Post Office Address: Full name of second joint inventor's signature*	ion without direct communication of a change in the person(s) from ys and/or agents named hereinable Sakari KOTOLA Alppitie 10 B, 02700 Kau Finland Same as above. Entor: Holger HUS\$MANN	between the U.S. attorneys and/or agents whom instructions may be taken I will so ove. Date Unianen, Finland

Docket No. <u>4208-4047US1</u>

SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*		
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	Date
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*		
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland	Date
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*		D-45
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	Heikki HUOMO	
Inventor's signature*		
Residence:	Riekkotie 13, 90650 Oulu, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above	

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After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most (a) effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is

Docket No. 4208-4047US1

unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the National or PCT international filing date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in--
 - (1) an application for patent, published under section 122(b), by another filed in the United States

Docket No. 4208-4047US1

before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
 - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
 - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
 - (2) A patent issued on a process under paragraph (1)—
 - (A) shall also contain the claims to the composition of matter used in or made by that process,
 - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
 - (3) For purposes of paragraph (1), the term "biotechnological process" means-

Docket No. 4208-4047US1

- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism to--
 - (i) express an exogenous nucleotide sequence,
 - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
 - (iii) express a specific physiological characteristic not naturally associated with said organism:
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
 - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
 - (3) The Director may require a certified copy of the original foreign application, specification, and

Docket No. 4208-4047US1

drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
 - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
 - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
 - (1) the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
 - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

Docket No. 4208-4047US1

Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

Docket No. <u>4208-4047US1</u>

COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:
the specification of which
a. is attached hereto
b. was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable).
PCT FILED APPLICATION ENTERING NATIONAL STAGE
c. was described and claimed in International Application No. filed on and as amended on . (if any).
I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.
I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56.
I hereby specify the following as the correspondence address to which all communications about this application are to be directed:
SEND CORRESPONDENCE TO:
The address associated with the Customer Number 27123
Address Shown (see below)
DIRECT TELEPHONE CALLS TO:
Joseph C. Redmond, Jr.

(NC28559CIP)

(202) 857-7929

	§ 365(b) of any foreign PCT international approach also have identificated PCT internations.	of application(s) losignated below such fore all application(s) files that of	ting at least one of ign application(s) ed by me on the state application of the application of the state application of the ap	Docket No. 4 ited States Code § 119 (sor's certificate or under § country other than the U.) for patent or inventor's same subject matter havion which priority is claim oplication(s) listed below	S. listed below certificate or ng a filing date ned:
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Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

	by appoint: Practitioners associated with th	27123	
<u> </u>	Practitioners associated with th	e Castomer Tramson	2,120
OR-			
]	Practitioner(s) named below:		
	Name		Registration Number
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Docket No. <u>4208-4047US1</u>

SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*	in Ast	Nev 300-6 Date
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*		Date
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland	
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*		Date
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	Heikki HUOMO	
Inventor's signature*		Date
Residence:	Riekkotie 13, 90650 Oulu, Finland	
Citizenship:	Finland	
Post Office Address:	Same as above	

Docket No. 4208-4047US1

*Before signing this declaration, each person signing must:

- 1. Review the declaration and verify the correctness of all information therein; and
- 2. Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

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Docket No. 4208-4047US1

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- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
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Docket No. 4208-4047US1

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- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Title 35, U.S. Code § 103

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- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
 - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
 - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
 - (2) A patent issued on a process under paragraph (1)—
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 - (3) For purposes of paragraph (1), the term "biotechnological process" means--

Docket No. <u>4208-4047USI</u>

- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism
 - (i) express an exogenous nucleotide sequence,
 - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
 - (iii) express a specific physiological characteristic not naturally associated with said organism:
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
 - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
 - (3) The Director may require a certified copy of the original foreign application, specification, and

Docket No. 4208-4047US1

drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
 - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
 - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
 - (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
 - (g) As used in this section--
 - (1) the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
 - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

Docket No. 4208-4047US1

Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

Docket No. 4208-4047US1

(NC28559CIP)

COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that:

77368 v1

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

the specific	ation o	of which	
a.		is attached hereto	
b.	\boxtimes	was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended of . (if applicable).	n
		PCT FILED APPLICATION ENTERING NATIONAL STAGE	
c.		was described and claimed in International Application No. filed on as amended on . (if any).	
I hereby staincluding t	ate that he clai	I have reviewed and understand the contents of the above-identified specification, ms, as amended by any amendment referred to above.	
I acknowle § 1.56.	dge the	e duty to disclose information which is material to patentability as defined in 37 C.F.R.	
		he following as the correspondence address to which all communications about this be directed:	
SEND COL	RRESP	ONDENCE TO:	
-OR-	The	address associated with the Customer Number 27123	
	Addı	ress Shown (see below)	
Jose		HONE CALLS TO: Redmond, Jr. 7929	

	Docket No. 4208-4047US1 I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed: The attached 35 U.S.C. § 119 claim for priority for the application(s) listed below forms a part of					
	this declaration.	.5.C. § 119 ciaim ic	r priority for the appli	cation(s) listed below	forms a part of	
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed	
					☐ Y ☐ N	
					\square Y \square N	
					□Y □N	
	I hereby claim the below.	benefit under 35 U.	S.C. § 119(e) of any U	J.S. provisional applic	eation(s) listed	
I here	A C OR	ONTINUATION (PCT APPLICAT)	Date of filing TEMENTS FOR DI OR CONTINUATION ON(S) DESIGNATION CONTINUE STATES CONTINUE STATE	N-IN-PART NG THE U.S.	pplication(s) or	
			ation(s) designating th		pprication(5) of	
	n. Ser. No. 10/105,320 CT Application Serial		Date Status (d (6,892,052 B2, issu (patented, pending, ab tion no. assigned (For	andoned)/ U.S.	
US/P	CT Application Serial	No. Filing I		patented, pending, ab tion no. assigned (For		
	application is not d application(s) in th 112, I acknowledge Federal Regulation	isclosed in the above manner provided to the duty to disclose, § 1.56(a) which to	, insofar as the subject re listed prior United S by the first paragraph of e material information occurred between the f iling date of this appli	States or PCT internation of Title 35, United State as defined in Title 37 illing date of the prior	ional ates Code, § 7, Code of	

Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I herel	by appoint:				
X	Practitioners associated with the Customer Number		er	27123	
-OR-			1		
	Practitioner(s) named below	:			
	Name			Registration Number	
I hereby authorize the U.S. attorneys and/or agents named hereinabove to accept and follow instructions from as to any action to be taken in the U.S. Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and/or agents and me. In the event of a change in the person(s) from whom instructions may be taken I will so notify the U.S. attorneys and/or agents named hereinabove.					
Full n	ame first joint inventor:	Sakari KOTOLA			
Inven	tor's signature*	· · · · · · · · · · · · · · · · · · ·			
Residence:		Date Alppitie 10 B, 02700 Kaunianen, Finland			
Citizenship:		Finland			
Post Office Address:		Same as above.			
Full name of second joint inventor:		Holger HUSSMANN	Ī		
Inven	tor's signature*				
Residence:		Satakunnankatu 22	E 12	Date 25, 33210 Tampere, Finland	
Citizenship:		Germany			
Post Office Address:		Same as above			
	ATTACHED IS ADDED PAG	E TO COMBINED DE	CLA	RATION AND POWER OF ATTORNEY FOR	

Docket No. <u>4208-4047US1</u>

SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	<u>Carmen KÜHL</u>	
Inventor's signature*		
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	Date
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*	Alul	9th NOV 2006
Residence:	213 Commonwealth Avenue Apt 9 Boston MA	Date USA 02216
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*		
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	<u>Heikki HUOMO</u>	
Inventor's signature*		
Residence:	Riekkotie 13, 90650 Oulu, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above	

Docket No. 4208-4047US1

*Before signing this declaration, each person signing must:

- 1. Review the declaration and verify the correctness of all information therein; and
- 2. Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most (a) effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is

Docket No. 4208-4047US1

unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the National or PCT international filing date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in--
 - an application for patent, published under section 122(b), by another filed in the United States

Docket No. 4208-4047US1

before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
 - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
 - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
 - (2) A patent issued on a process under paragraph (1)—
 - (A) shall also contain the claims to the composition of matter used in or made by that process, or
 - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
 - (3) For purposes of paragraph (1), the term "biotechnological process" means-

Docket No. 4208-4047US1

- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism to--
 - (i) express an exogenous nucleotide sequence,
 - inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
 - (iii) express a specific physiological characteristic not naturally associated with said organism;
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
 - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
 - (3) The Director may require a certified copy of the original foreign application, specification, and

Docket No. 4208-4047US1

drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
 - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
 - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
 - (1) the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
 - the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

Docket No. 4208-4047US1

Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

Docket No. 4208-4047US1

COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

My residence, post office address and citizenship are as stated below next to my name,

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

the specification of which

a. is attached hereto

b. was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable).

PCT FILED APPLICATION ENTERING NATIONAL STAGE

c. was described and claimed in International Application No. filed on and as amended on . (if any).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56.

I hereby specify the following as the correspondence address to which all communications about this application are to be directed:

SEND CORRESPONDENCE TO: The address associated with the Customer Number OR Address Shown (see below)

DIRECT TELEPHONE CALLS TO:

As a below named inventor, I hereby declare that:

Joseph C. Redmond, Jr. (202) 857-7929

	§ 365(b) of any fore PCT international a and also have identi such PCT internation within twelve (12) at The attached 35 U.S.	Docket No. 4208-4047US1 hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed: The attached 35 U.S.C. § 119 claim for priority for the application(s) listed below forms a part of				
	this declaration.	Application	Date of filing	Date of issue	Priority	
	Country/PCT	Number	(day, month, yr)	(day, month, yr)	Claimed	
					☐ Y ☐ N	
					\square Y \square N	
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	I hereby claim the below.	enefit under 35 U.S	.C. § 119(e) of any	U.S. provisional applic	cation(s) listed	
	AI CO <u>OR</u>	ONTINUATION O PCT APPLICATION	TEMENTS FOR D R CONTINUATIO DN(S) DESIGNAT	N-IN-PART ING THE U.S.		
I here under	by claim the benefit u § 365(c) of any PCT	nder Title 35, Unite international applica	d States Code § 120 ation(s) designating	of any United States a the U.S. listed below.	pplication(s) or	
	n. Ser. No. 10/105,320			ted (6,892,052 B2, issue (patented, pending, al		
US/PC	CT Application Serial	No. Filing D		ation no. assigned (Fo		
US/P	CT Application Serial	No. Filing D		(patented, pending, al ation no. assigned (Fo		
	application is not d application(s) in the 112, I acknowledge Federal Regulation	isclosed in the above e manner provided be the duty to disclose s, § 1.56(a) which o	e listed prior United by the first paragraph material information	ct matter of any of the States or PCT internal of Title 35, United Ston as defined in Title 3 filing date of the prior lication.	tional tates Code, § 7, Code of	

Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereb	y appoint:		
X	Practitioners associated with	the Customer Number	27123
-OR-			
	Practitioner(s) named below:		
	Name		Registration Number
			
	instructions from as to	any action to be taken i thout direct communicat ange in the person(s) from	amed hereinabove to accept and follow in the U.S. Patent and Trademark Office ion between the U.S. attorneys and/or agents in whom instructions may be taken I will so above.
Full n	name first joint inventor:	Sakari KOTOLA	
Inven	tor's signature*		
		10 D 00700 I	Date
Resid	lence:	Alppitie 10 B, 02700 k	Kaunianen, Fillianu
Citize	enship:	Finland	
Post (Office Address:	Same as above.	
Full r	name of second joint inventor:	Holger HUSSMANN	
Inven	ntor's signature*		
	lence:	Satakunnankatu 22 E	Date 125, 33210 Tampere, Finland
Citize	enship:	Germany	
Post	Office Address:	Same as above	

ATTACHED IS ADDED PAGE TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR

 \boxtimes

Docket No. 4208-4047US1

SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*		Date
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	Date
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*		Date
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland	Build
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*		
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	Date
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	<u>Heikki HUOMO</u>	
Inventor's signature*		Date
Residence:	Riekkotie 13, 90650 Oulu, Finland	Daic
Citizenship:	Finland	
Post Office Address:	Same as above	

Docket No. 4208-4047US1

*Before signing this declaration, each person signing must:

- 1. Review the declaration and verify the correctness of all information therein; and
- Review the specification and the claims, including any amendments made to the claims.

After the declaration is signed, the specification and claims are not to be altered.

To the inventor(s):

The following are cited in or pertinent to the declaration attached to the accompanying application:

Title 37, Code of Federal Regulation, §1.56

Duty to disclose information material to patentability

- A patent by its very nature is affected with a public interest. The public interest is best served, and the most (a) effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is

Docket No. <u>4208-4047US1</u>

unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.
- (e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the National or PCT international filing date of the continuation-in-part application.

Title 35, U.S. Code § 101

Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Title 35 U.S. Code § 102

Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent,
- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in--
 - (1) an application for patent, published under section 122(b), by another filed in the United States

Docket No. 4208-4047US1

before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
 - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
 - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
 - (2) A patent issued on a process under paragraph (1)—
 - (A) shall also contain the claims to the composition of matter used in or made by that process, or
 - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
 - (3) For purposes of paragraph (1), the term "biotechnological process" means-

Docket No. 4208-4047US1

- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism to--
 - (i) express an exogenous nucleotide sequence,
 - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
 - (iii) express a specific physiological characteristic not naturally associated with said organism;
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
 - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
 - (3) The Director may require a certified copy of the original foreign application, specification, and

Docket No. 4208-4047US1

drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
 - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
 - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
 - (1) the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
 - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

Docket No. 4208-4047US1

Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.

Docket No. 4208-4047US1

COMBINED DECLARATION AND POWER OF ATTORNEY FOR ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART APPLICATION

As a below named inventor, I hereby declare that: My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: the specification of which is attached hereto was filed on March 19, 2004 as application Serial No. 10/804,081 and was amended on . (if applicable). PCT FILED APPLICATION ENTERING NATIONAL STAGE was described and claimed in International Application No. and filed on as amended on . (if any). I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56. I hereby specify the following as the correspondence address to which all communications about this application are to be directed: SEND CORRESPONDENCE TO: 27123 The address associated with the Customer Number -OR-Address Shown (see below)

DIRECT TELEPHONE CALLS TO:

Joseph C. Redmond, Jr. (202) 857-7929

F	TI 1 1 . C .		1 0001 25 77 0		4208-4047US1			
	I hereby claim foreign priority benefits under Title 35, United States Code § 119 (a)-(d) or under § 365(b) of any foreign application(s) for patent or inventor's certificate or under § 365(a) of any PCT international application(s) designating at least one country other than the U.S. listed below and also have identified below such foreign application(s) for patent or inventor's certificate or such PCT international application(s) filed by me on the same subject matter having a filing date within twelve (12) months before that of the application on which priority is claimed:							
	The attached 35 U.S.C this declaration.	C. § 119 claim for	priority for the appli	cation(s) listed below	forms a part of			
	Country/PCT	Application Number	Date of filing (day, month, yr)	Date of issue (day, month, yr)	Priority Claimed			
					\square Y \square N			
					\square Y \square N			
					\square Y \square N			
	I hereby claim the ben	efit under 35 U.S.	C. § 119(e) of any U	J.S. provisional applic	ation(s) listed			
	below.							
	Provisional A	application No.	Date of filing	(day, month, yr)				
	ADDITIONAL STATEMENTS FOR DIVISIONAL, CONTINUATION OR CONTINUATION-IN-PART OR PCT APPLICATION(S) DESIGNATING THE U.S.							
	by claim the benefit unde § 365(c) of any PCT inte				oplication(s) or			
Appln	. Ser. No. 10/105,320	March 26		d (6,892,052 B2, issue				
US/PC	CT Application Serial No	. Filing Da		patented, pending, ab- tion no. assigned (For				
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US/PC	CT Application Serial No	Filing Da		patented, pending, abition no. assigned (For				
	In this continuation-in- application is not discle application(s) in the ma 112, I acknowledge the Federal Regulations, § and the national or PCT	osed in the above nner provided by duty to disclose 1.56(a) which occ	listed prior United S the first paragraph on material information curred between the fi	tates or PCT internation of Title 35, United States as defined in Title 37 ling date of the prior at	onal tes Code, § , Code of			

Docket No. 4208-4047US1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or Imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

I hereb	y appoint:			
X	Practitioners associated with the Customer Nu		er	27123
-OR-				
	Practitioner(s) named below:			
	Name			Registration Number
I hereby authorize the U.S. attorneys and/or agents named hereinabove to accept and follow instructions from as to any action to be taken in the U.S. Patent and Trademark Office regarding this application without direct communication between the U.S. attorneys and/or agents and me. In the event of a change in the person(s) from whom instructions may be taken I will so notify the U.S. attorneys and/or agents named hereinabove.				
Full n	ame first joint inventor:	Sakari KOTOLA	<u>-</u>	
Inven	tor's signature*			Date
Resid	ence:	Alppitie 10 B, 027	700 Ka	
1	enship:	Finland		
	Office Address:	Same as above.		
Full r	name of second joint inventor:	Holger HUSSMAN	(N	
Inven	tor's signature*			Date
Resid	lence:	Satakunnankatu 22	2 E 12	5, 33210 Tampere, Finland
Citize	enship:	Germany		
	Office Address:	Same as above		
<u> </u>	ATTACHED IS ADDED PAG	E TO COMBINED D	ECLA	RATION AND POWER OF ATTORNEY FOR

Docket No. <u>4208-4047US1</u>

SIGNATURE BY THIRD AND SUBSEQUENT INVENTORS FORM.

Full name third joint inventor:	Carmen KÜHL	
Inventor's signature*	Date	
Residence:	Plauener Str. 2, 44139 Dortmund, Germany	
Citizenship:	Germany	
Post Office Address:	Same as above.	
Full name of fourth joint inventor:	Peter WAKIM	
Inventor's signature*	Date	
Residence:	Mikonkatu 25 A 8, 00100 Helsinki, Finland	
Citizenship:	Australia	
Post Office Address:	Same as above	
Full name fifth joint inventor:	Petri VESIKIVI	
Inventor's signature*	Date	
Residence:	Lintupiha 12 a B, 02660 Espoo, Finland	
Citizenship:	Finland	
Post Office Address:	Same as above.	
Full name of sixth joint inventor:	Heikki HEOMO	
Inventor's signature*	H from Date	
Residence:	16 Church st, Meysey Hampton,, Gloucester, GL7 5JX, UK	
Citizenship:	Finland	
Post Office Address:	Same as above	

Docket No. 4208-4047US1

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- 2. Review the specification and the claims, including any amendments made to the claims.

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- (b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) The invention was described in--
 - (1) an application for patent, published under section 122(b), by another filed in the United States

-ii-

(NC 28559CIP)

Docket No. <u>4208-4047US1</u>

before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Title 35, U.S. Code § 103

- 103. Conditions for patentability; non-obvious subject matter
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b) (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—
 - claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date;
 and
 - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
 - (2) A patent issued on a process under paragraph (1)—
 - (A) shall also contain the claims to the composition of matter used in or made by that process, or
 - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
 - (3) For purposes of paragraph (1), the term "biotechnological process" means--

Docket No. <u>4208-4047US1</u>

- (A) a process of genetically altering or otherwise inducing a single- ormulti-celled organism
 - (i) express an exogenous nucleotide sequence,
 - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
 - (iii) express a specific physiological characteristic not naturally associated with said organism;
- (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and
- (C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).
- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, U.S. Code § 112 (in part)

Specification

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Title 35, U.S. Code, § 119

Benefit of earlier filing date in foreign country; right of priority

- (a) An application for patent for an invention filed in this country by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed; but no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country, or which had been in public use or on sale in this country more than one year prior to such filing.
- (b) (1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, identifying the foreign application by specifying the application number on that foreign application, the intellectual property authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director.
 - (2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.
 - (3) The Director may require a certified copy of the original foreign application, specification, and

Docket No. 4208-4047US1

drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.

- (c) In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country instead of the first filed foreign application, provided that any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.
- (d) Applications for inventors' certificates filed in a foreign country in which applicants have a right to apply, at their discretion, either for a patent or for an inventor's certificate shall be treated in this country in the same manner and have the same effect for purpose of the right of priority under this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents, provided such applicants are entitled to the benefits of the Stockholm Revision of the Paris Convention at the time of such filing.
- (e) (1) An application for patent filed under section 111(a) or section 363 of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application filed under section 111(b) of this title, if the application for patent filed under section 111(a) or section 363 of this title is filed not later than 12 months after the date on which the provisional application was filed and if it contains or is amended to contain a specific reference to the provisional application. No application shall be entitled to the benefit of an earlier filed provisional application under this subsection unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this subsection. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this subsection during the pendency of the application.
 - (2) A provisional application filed under section 111(b) of this title may not be relied upon in any proceeding in the Patent and Trademark Office unless the fee set forth in subparagraph (A) or (C) of section 41(a)(1) of this title has been paid.
 - (3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.
- (f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.
- (g) As used in this section--
 - (1) the term "WTO member country" has the same meaning as the term is defined in section 104(b)(2) of this title; and
 - (2) the term "UPOV Contracting Party" means a member of the International Convention for the Protection of New Varieties of Plants.

Docket No. 4208-4047US1

Title 35, U.S. Code, § 120

Benefit or earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

Please read carefully before signing the Declaration attached to the accompanying Application. If you have any questions, please contact Morgan & Finnegan, L.L.P.